

STATE OF MICHIGAN  
COURT OF APPEALS

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LUTRICA THOMPkins,

Plaintiff-Appellant,

v

JOSEPH BROWN, SEAN BROWN and  
VALERIE BROWN,

Defendants-Appellees.

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UNPUBLISHED

August 14, 2014

No. 313554

Wayne Circuit Court

LC No. 09-028713-NO

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order for settlement and dismissal between plaintiff and defendants, Joseph Brown and Sean Brown, in this negligence action. For the reasons stated below, we affirm.

I. THE SETTLEMENT AGREEMENT<sup>1</sup>

MCR 2.507(G)<sup>2</sup> provides:

(G) Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

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<sup>1</sup> "The finding of the trial court concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion." *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990). "The construction and application of a court rule are questions of law that this Court reviews de novo on appeal." *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006).

<sup>2</sup> MCR 2.507(G) was previously MCR 2.507(H) until 2011, when it was amended to be MCR 2.507(G). The language of the provision did not change. MCR 2.507(G) was also recently amended in September 2013, to MCR 2.507(F), and again, the language has not changed. All references to this rule will reference MCR 2.507(G), unless otherwise stated.

“A settlement agreement is binding when it is made in open court.” *Mikonczyk v Detroit Newspapers, Inc.*, 238 Mich App 347, 349; 605 NW2d 360 (1999). Further, a plaintiff is “bound by the settlement agreement absent a showing of mistake, fraud, or unconscionable advantage,” much like any other contract. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998).

The trial court correctly held that the settlement agreement was binding and enforced the agreement. The parties clearly put the settlement on the record, in open court, stating, “[t]he case with Joseph and Sean Brown has been resolved for \$12,500.” Thus, the settlement agreement met the requirements of MCR 2.507(G). Moreover, plaintiff fails to establish any reason why the settlement agreement should not be enforced—i.e., she shows no evidence of mistake, fraud, or unconscionable advantage. If she claims that her lawyer engaged in misconduct in his representation of her, defendants here are not responsible for her lawyer’s actions.

In any event, had her lawyer actually acted contrary to her wishes, Michigan courts would still enforce the settlement agreement. See *Nelson v Consumers Power Co.*, 198 Mich App 82, 91; 497 NW2d 205 (1993) (upholding a settlement under MCR 2.507(G)<sup>3</sup> where defense counsel relied on the apparent authority of plaintiff’s attorney to make a settlement, despite plaintiff’s assertions on appeal that his attorney did not have the authority to negotiate on his behalf). Again, plaintiff’s counsel acted on her behalf, the settlement agreement was made in open court, and defendants relied on the apparent authority of plaintiff’s counsel to make the settlement agreement. Thus, the settlement is binding and enforceable, and the trial court did not abuse its discretion.<sup>4</sup>

## II. MOTION FOR RECONSIDERATION<sup>5</sup>

According to MCR 2.119(F)(3):

Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court erred and the

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<sup>3</sup> The applicable rule in 1993 was MRC 2.507(H), which contained the same language as MCR 2.507(G).

<sup>4</sup> Plaintiff’s assertion of ineffective assistance of counsel is not a valid claim; this is a civil, not a criminal case. See *People v Trakhtenberg*, 493 Mich 38, 48; 826 NW2d 136 (2012) (ruling that a civil malpractice case against a party’s attorney is distinct from a criminal ineffective assistance of counsel claim).

<sup>5</sup> This Court reviews a trial court’s decision on a motion for reconsideration for an abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes. *Corporan v Henton*, 282 Mich App 599, 605-606; 766 NW2d 903 (2009).

parties have been misled and show that a different disposition of the motion must result from correction of the error.

A trial court has “discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided.” *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012).

Plaintiff presented no evidence or proof that could render the settlement agreement invalid. As noted, the settlement agreement was binding because it was made in open court between the parties, including plaintiff’s counsel, who had the authority to negotiate on plaintiff’s behalf. Plaintiff could have presented evidence of mistake, fraud, or unconscionability, in an attempt to show that the settlement agreement should not have been enforceable. *Plamondon*, 230 Mich App at 56. She failed to do so. Thus, the trial court properly denied plaintiff’s motion for reconsideration.

Affirmed.

/s/ Cynthia D. Stephens  
/s/ Henry William Saad  
/s/ Mark T. Boonstra